

**STATE OF MAINE
CUMBERLAND, SS.**

**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. YOR-19-327**

**IN RE: THE ESTATE OF CLAUDETTE SHELTRA
ON APPEAL FROM YORK COUNTY PROBATE COURT**

**BRIEF OF APPELLANT, JANET SHELTRA
PETITIONER**

**ATTORNEY FOR APPELLANT, JANET SHELTRA
VANESSA A. BARTLETT, ESQ./MAINE BAR NO. 8873
PO BOX 162, PORTLAND, ME 04112-0162
(207) 553-3966**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
FACTS.....	3
STATEMENT OF THE ISSUES	5
ARGUMENT	6
I. THE PROBATE COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO PERSONAL REPRESENTATIVE	
A. Standard of Review	6
B. There Existed a Genuine Issue of Material Fact as Whether Petitioner, Janet Sheltra, Met the Requirements to Toll the Statute of Limitations for Mental Illness.....	7
C. There Existed a Genuine Issue of Material Fact as to Whether the Personal Representative’s Actions Estopped Petitioner, Janet Sheltra from Exercising Her Legal Rights Under the Statute...	9
II. THE PROBATE COURT ERRED WHEN IT GRANTED ATTORNEY’S FEES AND COSTS.....	12
CONCLUSION	14
CERTIFICATE OF SERVICE	15

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Budge v. Town of Millinocket</u> , 2012 ME 122 ¶12, 55 A.3d 484	6
<u>Beal v. Allstate Ins. Co.</u> , 2010 ME 20, ¶11, 989 A.2d 733.....	6
<u>Estate of Dennis R. Kay v. Estate of Douglas J. Wiggins</u> , 2016 ME 108, ¶9, 143 A.3d 1290 (2016).....	6
<u>McAfee v. Cole</u> , 637 A.2d 463,466 (Me. 1994).....	7
<u>Niehoff v. Shankman & Associates Legal Ctr., P.A.</u> 2000 ME 214, ¶10; 763 A.2d 121.....	9
<u>Dasha v. Maine Medical Center</u> 665 A.2d 993 (Me. 1995).....	9,10,11
<u>Townsend v. Appel</u> , 446 A.2d 1132, 1134 (Me. 1982).....	10
<u>Vacuum Sys. Inc, v Bridge Constr. Co.</u> , 632 A.2d 442, 444 (Me. 1993)..	10
<u>Dugan v. Martel</u> , 588 A.2d 744, 746-47 (Me. 1991).....	10
<u>Hanusek v. Southern Maine Medical Center</u> , 584 A.2d at 634, 636.....	10
<u>Milliken v. Buswell</u> , 313 A.2d 111, 119 (Me. 1973).....	10
<u>Shackford & Gooch Inc. v. Town of Kennebunk</u> , 486 A.2d 102, 105-06 (Me. 1984).....	11
<u>Matter of Estate of Wright</u> , 637 A.2d 106, 110 (Me. 1994).....	11
<u>Estate of Voignier</u> , 609 A.2d 704, 708 (Me. 1992).....	11
<u>Estate of Brideau</u> , 458 A.2d 745, 748 (Me. 1983).....	11

<u>Statutes</u>	<u>Page</u>
14 MRS §853.....	7
18-A MRS §3-108(a)(3).....	7
18-A MRS §1-601.....	12
 <u>Rules</u>	
Rule 56(c) M.R.Civ.P.....	6

STATEMENT OF THE CASE

Petitioner Janet Sheltra and Respondent Paul Sheltra are siblings, and the biological children of the Decedent, Claudette Sheltra.

Since 2001 Claudette Sheltra had been treated for early Alzheimer's. (Letter attachment to Janet Sheltra's Opposition to Summary Judgment) In 2004, Claudette Sheltra executed a will, leaving property to be divided between Janet, Paul and Claudette's sister, Claire. By 2005, Paul Sheltra had been granted Power of Attorney for Claudette Sheltra. (Janet Sheltra's Opposition to Motion for Summary Judgment)

Claudette Sheltra executed a new will in 2006 expressly revoking her 2004 will. In 2011, Claudette Sheltra divested a number of her real estate interests to Paul Sheltra. On January 15, 2015, Claudette Sheltra died.

On February 20, 2015 Paul Sheltra was appointed as Personal Representative. On January 25, 2018 Janet Sheltra filed a Petition for Formal Probate, contesting the validity of the Will. (Petition for Formal Probate and Petition to Remove Personal Representative)

Personal Representative filed for Summary Judgment on the issue of the timeliness of Janet Sheltra's Petition for Formal Probate. Janet Sheltra responded, and the Court granted Summary Judgment on the issue of Timeliness for filing a Petition to Contest the Will. Hearing was had on the

other matters pending, and Final Judgment was entered in this matter on June 28, 2019. This appeal followed.

FACTS

The Parties agree that under 18-A MRS §3-108(3) provides that a Petition for Formal probate must have been filed in this matter no later than January 15, 2018, and that Janet Sheltra filed her Petition on January 25, 2018, 10 days beyond the Statute of Limitations. In support of her contention that she meets the criteria for exception that would toll the statute, she set forth the following facts in her pleadings. Many of these facts are disputed by the Personal Representative.

From 2001 forward, Janet Sheltra and Paul Sheltra had their differences. (PR Exhibits 43, 45, 46; Transcript Hearing 2/22/2019, Janet Sheltra's Opposition to Summary Judgment) Janet alleges from the time that Paul took the Power of Attorney from her mother, he has engaged in behavior that resulted in improvident transfers of her mother's assets, and undue influence on her mother's estate planning, including her 2006 will. (Janet Sheltra Opposition to Summary Judgment, Attachments thereto)

Janet also alleges that she was physically and emotionally abused by Paul Sheltra even before her mother died. (See Medical Records and Photograph attached to Janet Sheltra's Opposition to Summary Judgment) Upon her mother's death, she reports she was extremely traumatized after sitting with her mother and holding her while watching her slowly and

painfully pass away. (Janet Sheltra's Opposition to Summary Judgment)

Three months after her death, Janet was assaulted. She suffered such severe trauma to her head and face that she required extensive treatment. Since her mother's death she has suffered from debilitating Post Traumatic Stress Disorder. (Letter Attachment to Janet Sheltra's Opposition to Summary Judgment) She has been "significantly handicapped" emotionally. (Id.) She alleges she was drugged by a painter who assaulted her and stole her paint. This event caused her to be hospitalized for 37 days. She alleges she was being stalked, her tires were slashed, her real property was vandalized. She attributes many of these things, such as tire slashing and vandalizing her real property to her brother.

She was so debilitated by her fear of her brother and others that she has had an overall inability to function. Because of this fear of Respondent, she purchased a protection dog, changed her phone number and moved to an undisclosed location. (Janet Sheltra's Opposition to Summary Judgment)

Janet alleges that she had to undergo significant treatment in order to be able to return to an overall ability to function. She continues to suffer from mental illness and continues to remain in fear of her brother.

STATEMENT OF THE ISSUES

- I. THE PROBATE COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO PERSONAL REPRESENTATIVE
 - A. Standard of Review
 - B. There Existed a Genuine Issue of Material Fact as Whether Petitioner, Janet Sheltra, Met the Requirements to Toll the Statute of Limitations for Mental Illness
 - C. There Existed a Genuine Issue of Material Fact as to Whether the Personal Representative's Actions Estopped Petitioner, Janet Sheltra from Exercising Her Legal Rights Under the Statute

ARGUMENT

I. THE PROBATE COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO PERSONAL REPRESENTATIVE ON THE ISSUE OF TIMELINESS OF JANET SHELTRA’S PETITION CONTESTING THE WILL

A. Standard of Review

Summary Judgement is a procedural devise used by parties to obtain a judicial resolution of matters that may be decided without factfinding. On appeal, the Law Court reviews a grant of summary judgment under a de novo standard of review:

"We review the grant of a motion for summary judgment de novo," viewing the evidence "in the light most favorable to the party against whom the summary judgment has been granted in order to determine if there is a genuine issue of material fact. "*Budge*, 2012 ME 122, ¶ 12, 55 A.3d 484 (quotation marks omitted). If there is no genuine dispute of material fact, judgment may be entered as a matter of law. See *Beal v. Allstate Ins. Co.*, 2010 ME 20, ¶ 11, 989 A.2d 733." *Estate of Dennis R. Kay v. Estate of Douglas J Wiggins*, 143 A.3d 1290 (2016) 1293; 2016 ME 108 ¶9.

Summary Judgment is properly granted if the facts are not in dispute or, if the evidence favoring the non-movant is insufficient to support a judgment as a matter of law. A party is entitled to summary judgment only if statements of material fact and referenced evidence establishes that there is no genuine issue of material and that a party is entitled to judgment as a matter of law. M.R. Civ. P 56(c).

B. There Existed a Genuine Issue of Material Fact as Whether Petitioner, Janet Sheltra, Met the Requirements to Toll the Statute of Limitations for Mental Illness

When viewing the facts in the most favorable light to Janet Sheltra, there does exist a genuine issue of material fact. While Janet filed her Petition 10 days beyond the statute of limitations set forth in 18-A MRS §108a(3), 14 MRS §853 provides an exception that would toll the statute of limitations, mental illness.

The Probate Court found that Janet suffered from PTSD, but that it did not meet the criteria for mental illness that was anticipated by the legislature. It cited *McAfee v. Cole*, 637 A.2d 463, 466 (Me. 1994). In *McAfee*, the court gives little guidance as to the definition of mental illness except to say that it refers to an overall inability to function. However, it does not define that phrase. The Court did not expand on that definition, except to say that McAfee did not preserve the argument of mental illness.

In this case, Janet did raise the issue of mental and physical infirmity. She asserts that she was “distraught by her mother’s death” that she had to be hospitalized three times.” (Opposition to Motion for SJ) She provides a letter from her doctor dated March 23, 2016 stating that she is “handicapped” emotionally. (Letter Attachment to Motion for Summary Judgment) Within three months of her mother’s death she was assaulted so badly that required

reconstructive surgery. (Id.) , as well as specialized mental health treatment. (Id.) Despite her fragile state, she alleges that she was terrified of her brother due to actions he was engaging in prior to, during and after her mother's death. (Janet Sheltra's Opposition to Summary Judgment) She reports that her own brother had her hospitalized.

She tells a story of numerous assaults, stalkers and injuries. (Janet Sheltra's Opposition to Summary Judgment) She provides some evidence that those injuries actually occurred, and the mental illness that followed. (Id) She provides some evidence that there was some animosity between she and her brother such that she has been and continues to be in fear of him (Id.)

She states she is so afraid of her brother that she purchased a security dog, changed her phone number and moved to a hidden location. (Janet Sheltra's Opposition to Summary Judgment, Attachment of Receipt of Dog Purchase attached thereto) If that fear was unreasonable and these facts are not true, and she is paranoid for no reason, then that in and of itself shows some level of mental illness.

While her *pro se* submission was unclear as to specific dates, it is very clear that a genuine issue of material fact exists as to whether her mental illness arose to the level that prevented her from overall functioning in society.

Janet raised a genuine issue of fact that she was incapacitated during the entire three years of the estate administration. Even if that were not so, the incapacity at the time of her mother's death, and during the last twenty days leading up to January 25, 2018, excused her lateness of ten days in requesting formal and or supervised administration. Which, would have been appropriate for this case from the beginning and likely would have changed the outcome, given the other allegations concerning transfers of property and concerns about the validity of the 2006 will. Were these facts found to be true, then the formal probate of this estate would have been more than appropriate.

The summary judgment process is not a substitute for trial. If material facts are disputed, the dispute must be resolved through fact-finding, even though the nonmoving party's likelihood of success is small. Niehoff v. Shankman & Associates Legal Ctr., P.A., 2000 ME 214 ¶10, 763 A.2d 121.

C. There Existed a Genuine Issue of Material Fact as to Whether the Personal Representative's Actions Estopped Petitioner, Janet Sheltra from Exercising Her Legal Rights Under the Statute

The Court also cites Dasha v. Maine Medical Center, 665 A.2d 993 (ME. 1995), stating that the Court refused to apply the tolling statute because the person claiming incapacity was competent at the time of the misdiagnosis in a medical malpractice claim. Dasha based his statute of limitations tolling defense

on the doctrine of equitable estoppel. Dasha was incapacitated as a result of a misdiagnosis and by the time it was discovered the Dasha was incompetent. The Statute of Limitations had expired by the time he filed. The Court ruled that the equitable estoppel principle did not apply because the hospital and/or doctor said nothing nor took action to induce him from filing suit. *Id.*

In this case, Janet Sheltra provides some evidence of actions taken by Personal Representative Paul Sheltra that placed her in such fear that prevented her from filing suit. (Janet Sheltra's Opposition to Summary Judgment) She alleges that he had physically and emotionally abused her prior to her mother's death. She states she had to hide in the closet to visit her mother. She states that she was afraid to challenge him on anything that he did. She states he had her hospitalized. *Id.* She states he has sabotaged her vehicle and her real estate. Her attempts to protect herself from him resulted in her being hospitalized.

The Dasha Court, while citing other cases explained:

"The gist of an estoppel barring the defendant from invoking the defense of the statute of limitations is that the defendant has conducted himself in a manner which actually induces the plaintiff not to take timely legal action on a claim. The plaintiff thus relies to his detriment on the conduct of the defendant by failing to seek legal redress while the doors to the courthouse remain open to him. Only upon a demonstration that the plaintiff had in fact intended to seek legal redress on his claim during the prescriptive period can his failure to file suit be specifically attributed to the defendant's conduct." *Id* at 995.

"Townsend v. Appel, 446 A.2d 1132, 1134 (Me. 1982) (citations omitted); *see also Vacuum Sys., Inc. v. Bridge Constr. Co.*, 632 A.2d 442, 444 (Me.1993); Dugan v. Martel, 588 A.2d 744, 746-47 (Me.1991); Hanusek, 584 A.2d at 636. Equitable estoppel "is a doctrine that should be `carefully and sparingly applied.'" Vacuum Sys. Inc. v. Bridge Construction, 632 A.2d at 444 (quoting Milliken v. Buswell,

313 A.2d 111, 119 (Me. 1973)). "Proper application of the doctrine of equitable estoppel rests on the factual determination that the declarations or acts relied upon must have induced the party seeking to enforce the estoppel to do what resulted to his detriment, and what he would not otherwise have done." Shackford & Gooch, Inc. v. Town of Kennebunk, 486 A.2d 102, 105-06 (Me.1984) (citations omitted)." Id.

Janet presents a genuine issue of material fact as to whether Paul Sheltra took deliberate actions to place her in such fear that she was unable to take steps to protect her legal interest. Janet established as support for a mere ten day allowance of time genuine issues of disputed material fact that, during the entire period of administration, if she challenged anything she feared for her life; that her brother essentially controlled her through terror, that she was under extreme duress; that she was assaulted; had other physical attacks made on her; was seriously injured; for a time placed on drugs, and had a life consisting of nothing more than hiding, isolation and fear.

When the actions of the adverse party prevent a party from protecting herself, that in itself creates an issue of material fact as to the failure to protect, its consequences and excuse. Paul was aware of Janet's fragile mental state. Janet alleges that he was instrumental in ensuring that her mental state remained impaired.

II. THE DISTRICT COURT ERRED WHEN IT AWARDED ATTORNEY'S FEES AND COSTS TO COME OUT OF JANET SHELTRA'S PORTION OF THE ESTATE

"18-A M.R.S.A. § 1-601 allows attorney fees to be awarded, in contested cases, "as justice requires." The only caveat in the statute is that "[i]n those cases where a will is being contested *on the grounds of undue influence or mental capacity*, attorney's fees... shall not be allowed to the party contesting the will if he is unsuccessful." (emphasis added). Matter of Estate of Wright, 637 A.2d 106, 110 (Me. 1994).

The Wright Court discussed the "as justice required" standard in light of Estate of Voignier, 609 A.2d 704, 708 (Me. 1992). Voignier believed the primary concern should be whether litigation "benefitted" the estate. However, it did not define this standard further, but pointed us to Estate of Brideau, 458 A.2d 745, 748 (Me. 1983). The Brideau Court defined "benefit the estate" as equal to "good faith". It pointed out that 18-A MRS §1-601 was meant to prevent frivolous or nuisance lawsuits.

Janet Sheltra's Petition, while filed late, was not designed to be a nuisance to the estate. In fact, her pleadings indicate throughout that she was concerned that this was not what her mother wanted. If, after trial she were able to prove that property was improvidently transferred during Claudette Sheltra's lifetime, that would, in fact, benefit the estate by increasing its overall value. This would denote

her “good faith”. The Court’s decision does little to inform Janet as to the Court’s thinking in using its discretion to award fees, other than awarding them from the point of her Petition for Formal Probate. (Order after Hearing June 28, 2019)

Janet asserts that the Court did not consider her “good faith” and abused its discretion in awarding the fees of the administration of the estate to come solely out of her share of the Estate. Janet has expended her own attorney’s fees in her efforts to protect the estate.

CONCLUSION

Based upon the above, Summary Judgment is not appropriate in this matter as to timeliness of filing. Janet asserted sufficient evidence in her filings to raise issues as to whether her matter falls under the tolling statutes or principles of equitable estoppel.

Even if only some of her statements were accepted, they created a genuine issue of material fact sufficient to require further fact-finding on this issue. Therefore, Janet Sheltra asks this Court to overturn the Probate Court's decision regarding Summary Judgment and remand for a testimonial hearing on the issue of whether Janet Sheltra met the requirements of a relevant tolling statute or other common law doctrine.

The award of attorney's fees should be set aside.

Dated: November 26, 2019

Respectfully submitted,

Vanessa A. Bartlett, Esq. #8873
Attorney for Janet Sheltra
PO Box 162
Portland, ME 04112-0162
(207) 553-3966

CERTIFICATE OF SERVICE

I, Vanessa A. Bartlett, attorney for Appellant, Janet Sheltra. certify that I have this date mailed two copies of the Appellant's Reply Brief to Counsel for The Estate of Claudette Sheltra and Personal Representative, Paul Sheltra, by United States Mail, first-class, postage prepaid, addressed as follows:

F. Jay Meyer, Esq.
Trough Heisler, LLC
511 Congress St., Ste 700
PO Box 9711
Portland, ME 04104-5011

Date: February 4, 2020

Vanessa A. Bartlett, Esq. #8873
Counsel for Janet Sheltra
PO Box 162
Portland, ME 04112-0162